

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JEFFREY A. VOIGT,

Petitioner,

v.

Case No. 06-C-0043

**PHIL KINGSTON,
Warden, Waupun Correctional Institution,**

Respondent.

DECISION AND ORDER

Jeffrey A. Voigt (“Voigt”) is currently serving a term of imprisonment of twenty years at the Waupun Correctional Institution, in Waupun, Wisconsin. In August 1994, a Wisconsin state court entered judgment of conviction against Voigt for counts related to robbery, theft, and reckless endangerment. On January 10, 2006, this Court received Voigt’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Voigt seeks leave to proceed *in forma pauperis* on his petition, which is also before this Court for Rule 4 preliminary review.

To authorize a litigant to proceed *in forma pauperis*, the Court must make two determinations: (1) whether the litigant is unable to pay the costs of commencing the action; and (2) whether the action warrants dismissal because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant

who is immune from such relief. 28 U.S.C. §§ 1915(a)(1) & (e)(2). The Court is obliged to give Voigt's *pro se* allegations, however unartfully pleaded, a liberal construction. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

The Court has reviewed Voigt's application to proceed without prepayment of fees and affidavit. Voigt's prison statements show that his accounts contain over \$250, with average monthly deposits of approximately \$30. Based on these numbers and the absence of any stated expenses by Voigt, the Court finds that he is able to pay the \$5 fee associated with filing his action.

Because the Court has found that Voigt is not indigent for purposes of filing his action, the Court does not need to consider whether Voigt's action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §§ 1915(a)(1) & (e)(2). Similarly, the Court will not undertake any Rule 4 preliminary review until Voigt has paid the requisite filing fee. If he fails to pay the filing fee within the time frame established by the Court, his petition will be dismissed without prejudice.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Voigt's Motion for Leave to Proceed *In Forma Pauperis* (Docket No. 2) is **DENIED**. If Voigt wishes to proceed with his petition, he must pay the filing fee associated with his action no later than May 19, 2006. If Voigt fails to pay the filing fee within that prescribed time, his action will be dismissed without prejudice. If Voigt pays the filing fee, the Court will then review his petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

Dated at Milwaukee, Wisconsin this 6th day of April, 2006.

BY THE COURT

s/ Rudolph T. Randa
Hon. Rudolph T. Randa
Chief Judge